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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68695; File No. SR-CBOE-2013-004)

January 18, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 7, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's website (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. Specifically, the Exchange proposes to amend its Volume Incentive Program ("VIP"), through which the Exchange credits each Trading Permit Holder ("TPH") the per contract amount resulting from each public customer ("C" origin code) order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding Qualified Contingent Cross ("QCC") trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80), provided the Trading Permit Holder meets certain volume thresholds in a month. First, the Exchange proposes to change the different fee tier thresholds in the VIP from nominal customer contracts per day thresholds (i.e. contracts 250,001 – 375,000 customer contracts per day ("CPD")) to a relative contracts per month threshold structure (i.e. 2.25% - 3.50% of total national customer volume in multiply-listed options monthly). Going forward, qualification for the different fee rates at different tiers in the VIP will be based on a TPH's percentage of national customer volume in multiply-listed options monthly, and the heading for the different percentage tiers will be Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly).[3] The purpose of the change to move away from basing the fee tiers on a

3 The Exchange uses contract sides, rather than contracts, to calculate the denominator for the percentage of national customer volume. See e-mail from Jeff Dritz, Assistant Secretary, CBOE, to Richard Holley, Assistant Director, SEC Division of Trading and Markets, Office of Market Supervision, dated January 11, 2013.

TPH's nominal customer contracts per day to a TPH's relative contracts per month (as a percentage of total national customer volume in multiply-listed options) is to control and account for changes in national industry-wide customer multiply-listed options volume. Corresponding to this change, the Exchange also proposes to amend the section of the "Notes" on the VIP table to state that, in the event of a CBOE System outage or other interruption of electronic trading on CBOE, the Exchange will adjust the national customer volume in multiply-listed options for the duration of the outage.[4] This means that, in the event of a CBOE System outage or other interruption of electronic trading on CBOE, any national customer trading in multiply-listed options during the outage will not be counted towards the establishment of a TPH's VIP threshold.

The Exchange also proposes to change the amounts of the credits in the second and fourth tiers of the VIP. The credit in the second tier will be increased from $0.05 per contract to $0.07 per contract, and the credit in the fourth tier will be decreased from $0.20 per contract to $0.18 per contract. Going forward, the relative (percentage) volume thresholds and credit amounts will be as follows:

Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)	Per Contract Credit
0% – 0.75%	$0.00
Above 0.75% - 2.25%	$0.07
Above 2.25% - 3.50%	$0.12

4 Currently, the relevant passage states that "In the event of a CBOE System outage or other interruption of electronic trading on CBOE, the Exchange will take into account, on a pro rata basis, the length of time of the interruption for purposes of calculating the contracts per day." However, this accounting (which is currently relevant as CBOE is measuring qualification for the VIP on a nominal customer contracts per day basis) will no longer be relevant under the proposed relative contracts per month VIP qualification structure.

Above 3.50% - 5.00%	$0.18
Above 5.00%	$0.05

The purpose of increasing the credit in the second tier and decreasing the credit in the fourth tier by $0.02 each is to rationalize the opportunity to receive a credit under the VIP across a broader set of participants. Lowering the credit in the fourth tier allows the Exchange to make up for increasing the credit in the second tier.

The Exchange also proposes to add to the notes on the VIP table an additional credit of $0.10 per contract, on top of other VIP credits, at every tier, for the electronic execution of each leg of a customer complex order in multiply-listed options (the "Customer Complex Credit"). The purpose of the proposed Customer Complex Credit is to respond to competitive pricing schedules of other exchanges that specifically attempt to attract customer complex order flow through increased rebates for electronic complex customer orders.[5]

The Exchange also proposes to assess an additional surcharge of $0.10 per contract, on top of regular transaction fees, for the electronic execution of each leg of a complex order in multiply-listed options that executes against a customer complex order (the "Surcharge"). The Surcharge applies to all market participants except customers. This Surcharge will not be assessed to individual leg markets that execute against a customer complex order. The Surcharge will be described in proposed new footnote 30 to the Fees Schedule. The purpose of the Surcharge is to offset the additional payments that will be required by the Customer Complex Credit.

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5 See Section II of the Schedule of Fees of the International Securities Exchange, LLC ("ISE"), which shows significant rebates for Priority Customers executing complex orders (compare with Section I, which shows non-complex order fees). The ISE is an all-electronic options exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that converting the qualification for the different fee tiers in the VIP from measuring by a TPH's nominal contracts per day to measuring by the TPH's relative contracts per month (based on the percentage of national customer volume in multiply-listed options that the TPH electronically executes) is reasonable because it allows the Exchange to control and account for changes in national industry-wide customer multiply-listed options volume. Further, it will still allow TPHs to receive a credit for electronically executing customer orders in multiply-listed options, just as prior to this change. The Exchange believes that the change is equitable and not unfairly discriminatory because it will be applied to all TPHs, who, like before, will be eligible to receive credits for electronically executing customer orders in multiply-listed options. The change merely switches out the measuring stick to use one that accounts for changes in industry-wide volume.

The Exchange believes that the proposed changes to increase the credit in the second tier of the VIP and decrease the credit in the fourth tier by $0.02 each are reasonable. In the case of the increase in the credit for the second tier, the change will allow TPHs who reach the

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6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4).

percentage threshold in that tier to receive an increased credit for doing so. In the case of the decrease in the credit for the fourth tier, the change will still allow TPHs who reach the percentage threshold in that tier to receive a credit (the highest credit of any tier). These changes are equitable and not unfairly discriminatory because they will be applied to all TPHs. Moreover, the purpose of these proposed changes is to encourage the sending and electronic execution of customer multiply-listed options volume to the Exchange. This increased volume creates greater trading opportunities that benefit all market participants (including TPHs that do not reach the higher-credit tiers in the VIP). Further, the increased volume and improved trading opportunities will provide such TPHs with a better opportunity to reach the higher-credit tiers in the VIP.

The Exchange believes that the proposed Customer Complex Credit is reasonable because it will allow customers who electronically execute complex orders in multiply-listed options to receive an extra $0.10 credit for doing so. Limiting the Customer Complex Credit to customers is equitable and not unfairly discriminatory because other market participants generally prefer to execute their orders against customer orders, and the Customer Complex Credit is designed to encourage the sending and electronic execution of customer complex orders to the Exchange, which will provide other market participants with more opportunities to achieve these preferred executions. Further, while only customer order flow qualifies for the proposed Customer Complex Credit Program, an increase in customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Limiting the Customer Complex Credit to multiply-listed options is equitable and not unfairly discriminatory because the Exchange has devoted a lot of resources to develop its proprietary singly-listed options classes, and therefore needs to retain funds collected in order to recoup those expenditures.

The Exchange also proposes limiting the Customer Complex Credit to electronic orders because the vast majority of TPHs that transmit customer orders in multiply-listed options to the Exchange do so electronically. The Exchange believes that it is reasonable to offer a rebate only for order entered electronically in an attempt to attract greater electronic business and compete with other exchanges for such business. Moreover, the competitive pressures from other exchanges in electronic orders and different business model for electronic orders as opposed to open outcry orders leads the Exchange to offer a rebate in order to compete with other exchanges for electronic orders. The business models surrounding electronic orders and open outcry orders are different, and as such, the Exchange offers different incentives to encourage the entry of electronic and open outcry orders. The Exchange also believes that paying a different credit for electronic orders than it does for open outcry orders is equitable and not unfairly discriminatory because other exchanges distinguish between delivery methods for certain market participants and pay different rebates depending on the method of delivery. This type of distinction is not novel and has long existed within the industry. Further, the Exchange believes that the offering of the Customer Complex Credit will cause an increase in volume. The Exchange has expended considerable resources to develop its electronic trading platforms and seeks to recoup the costs of such expenditures through the receipt of the fees associated with such increased volume.

The Exchange believes that the Surcharge is reasonable because it is necessary to offset the payments that will be made by the Exchange under the Customer Complex Credit. Further, other exchanges assess higher fees for complex orders than for non-complex ones.[8] Applying the

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[8] See ISE Schedule of Fees, Section I (which lists regular Maker rebates and fees and Taker fees for Select Symbols) as compared to Section II (which lists complex order fees and rebates for Select Symbols). Market participants are assessed higher fees for executing complex orders, and specifically and especially for executions in complex orders that execute against Priority Customer orders.

Surcharge to all market participants except customers is equitable and not unfairly discriminatory because other market participants generally prefer to execute their orders against customer orders. By exempting customer orders, the Surcharge will not discourage the sending of customer orders, and therefore there should still be plenty of customer orders for other market participants to trade with. Further, the options industry has a long-standing practice of assessing preferable fee structures to customers. Moreover, assessing the Surcharge only to complex orders that execute against customer orders is equitable and not unfairly discriminatory because, as stated above, other market participants generally prefer to execute their orders against customer orders, and therefore it is justifiable for them to be assessed a premium for such preferable executions.

Limiting the Surcharge to multiply-listed options is equitable and not unfairly discriminatory because the Exchange has devoted a lot of resources to develop its proprietary singly-listed options classes, and therefore does not desire to risk discouraging the trading of such proprietary singly-listed options classes. The Exchange needs to retain funds collected from fees from proprietary singly-listed options transactions in order to recoup the expenditures associated with developing such products.

Limiting the Surcharge to orders entered electronically is equitable and not unfairly discriminatory because the competitive pressures from other exchanges in electronic orders and different business model for electronic orders as opposed to open outcry orders leads the Exchange to sometimes offer a different fee structure in order to compete with other exchanges for electronic orders. The business models surrounding electronic orders and open outcry orders are different, and as such, the Exchange offers different incentives to encourage the entry of electronic and open outcry orders. Other exchanges distinguish between delivery methods for certain market participants and pay different rebates depending on the method of delivery. This type of distinction is not novel and has long existed within the industry. The Exchange also believes that assessing different fees and rebates for electronic orders than it does for open outcry orders is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and seeks to recoup the costs of such expenditures.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed conversion of the VIP thresholds to relative (as opposed to nominal) thresholds and the changes to the per-contract credit amounts in the second and fourth tiers of the VIP will impose an unnecessary burden on intramarket competition because the changes will apply to all CBOE TPHs (as the VIP will still and did previously apply to all CBOE TPHs). The Exchange also does not believe that such changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that some of the changes to the VIP may attract greater trading volume to CBOE (and away from other exchanges), the Exchange notes that market participants trading on other exchanges can always elect to become TPHs on CBOE. Further, the Exchange exists in a competitive marketplace, and to the extent that these proposed changes make other exchanges less competitive with CBOE, market participants trading on those other exchanges can elect to trade on CBOE.

CBOE does not believe that the adoption of the Customer Complex Credit will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While the Customer Complex Credit only applies to customers, other market participants generally prefer to execute their orders against customer orders, and the Customer Complex Credit is designed to encourage the sending and electronic execution of customer complex orders to the Exchange, which will provide other market participants with more opportunities to achieve these preferred executions. Further, while only customer order flow qualifies for the proposed Customer Complex Credit Program, an increase in customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Therefore, any potential effects that the adoption of the Customer Complex Credit may have on intramarket competition are justifiable due to the reasons stated above. The Exchange does not believe that the adoption of the Customer Complex Credit will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Complex Credit will increase competition with other exchanges, as the purpose of the proposed Customer Complex Credit is to respond to competitive pricing schedules of other exchanges that specifically attempt to attract customer complex order flow through increased rebates for electronic complex customer orders.[9] To the extent that the adoption of Customer Complex Credit may result in increased trading volume on CBOE and lessened volume on these other exchanges, the Exchange notes that market participants trading on other exchanges can always elect to become TPHs on CBOE. Further, the Exchange exists in a competitive marketplace, and to the extent that these proposed changes make other exchanges less

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9 See Section II of the Schedule of Fees of the ISE, which shows significant rebates for Priority Customers executing complex orders (compare with Section I, which shows non-complex order fees). The ISE is an all-electronic options exchange.

competitive with CBOE, market participants trading on those other exchanges can elect to trade on CBOE.

The Exchange does not believe that the adoption of the Surcharge will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While it does apply to all market participants except for customers, other market participants generally prefer to execute their orders against customer orders. By exempting customer orders, the Surcharge will not discourage the sending of customer orders, and therefore there should still be plenty of customer orders for other market participants to trade with. Therefore, any potential effects that the adoption of the Surcharge may have on intramarket competition are justifiable. Further, the options industry has a long-standing practice of assessing preferable fee structures to customers. The Exchange does not believe that the adoption of the Surcharge will impose any burden on intramarket [sic] competition that is not necessary or appropriate in furtherance of the purposes of the Act. The imposition of the Surcharge (which is important to offset the costs of the Customer Complex Credit) should not, by itself, attract trading volume from other exchanges (as it requires payment of a surcharge for an activity that did not previously require such payment). Further, other exchanges assess higher fees for complex orders than for non-complex ones.[10]

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing

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10 See ISE Schedule of Fees, Section I (which lists regular Maker rebates and fees and Taker fees for Select Symbols) as compared to Section II (which lists complex order fees and rebates for Select Symbols). Market participants are assessed higher fees for executing complex orders, and specifically and especially for executions in complex orders that execute against Priority Customer orders.

structure designed to incent market participants to direct their order flow to the Exchange, and the Exchange believes that such structure will help the Exchange remain competitive with those fees and rebates assessed by other venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f) of Rule 19b-4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-004 on the subject line.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 C.F.R. 240.19b-4(f).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2013-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-004, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill
Deputy Secretary

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13 17 CFR 200.30-3(a)(12).